

Summary Minutes
City of Sedona
Planning & Zoning Commission Meeting
Vultee Conference Room, Sedona City Hall, Sedona, AZ
Tuesday, September 21, 2010 - 3:30 p.m.

1. Verification of Notice, Call to Order, Pledge of Allegiance and Roll Call.

Chairman Gillon called the meeting to order at 3:30 p.m.

Roll Call:

Planning & Zoning Commissioners: Chairman Alex Gillon, Vice Chairman John Griffin and Commissioners James Eaton, Michael Hadley, Marty Losoff, Alain Soutenet and Norm Taylor

Staff: Beth Escobar, Nick Gioello, John O'Brien, Donna Puckett and Ron Ramsey

Council Liaison: Councilor Michael Ward

2. Commission/Staff announcements and summary of current events by Chairman/staff.

John O'Brien indicated that Chairman Gillon's and Commissioner Eaton's terms are expiring. They were advertised and Chairman Gillon has reapplied; however, we will be advertising to get more candidates, and we generally ask those Commissioners leaving if they would like to continue to serve until a replacement is named or you are reappointed, so he will do that now for the record. John O'Brien then asked Chairman Gillon if he wanted to continue to serve until being considered for reappointment or a new member is named and Chairman Gillon stated yes. John O'Brien then asked Commissioner Eaton if he wanted to continue to serve until a replacement is named and Commissioner Eaton stated that this is his last meeting, because he will not be present for the next meeting.

Chairman Gillon indicated that being the case, he wanted to thank Commissioner Eaton for his many years of service to the City, the recent six of which were on the Planning & Zoning Commission, but also for his previous years on the City Council. This won't be his last service to the City, but it has been his (the Chairman's) pleasure to serve with Jim.

John O'Brien added that he has worked with Commissioner Eaton for about 22 years; he was on the original Planning & Zoning Commission from 1988 to 1991, then he ran for the third City Council and served from 1992-1996, and he was then instrumental in the adoption of the City's Historic Preservation Ordinance and was the first Chairman of the Historic Preservation Commission in 1997, and returned to Planning & Zoning in 2004 for another six years. He is also very active with the Sedona Academy and the Sedona Historical Society. Jim has also recently been appointed to the Steering Committee for the Community Plan update, so he wants to personally thank Jim for all he has done for the City.

3. Approval of minutes for the following meeting: Tuesday, August 17, 2010 (R)

MOTION: Commissioner Hadley moved to approve the minutes of Tuesday, August 17th. Vice Chairman Griffin seconded the motion. VOTE: Motion carried seven (7) for and zero (0) opposed.

4. **Public Forum – for items not listed on the agenda within the jurisdiction of the Planning and Zoning Commission – limit of three minutes per presentation. (Note that the Commission may not discuss or make any decisions on any matter brought forward by a member of the public.)**

The Chairman opened the public forum and having no requests to speak, closed the public forum.

5. **Introduction/discussion regarding the agenda items for the regularly scheduled meeting of Tuesday, November 2, 2010:**

The Chairman reminded the Commission that agenda items 5A and 5B are introductory discussions, so the Commission is looking for major showstoppers and not for all of the details; they will come back at a future meeting.

- A. **Request for Conditional Use Permit for an open-air market located at 2575 W. SR 89A. The applicant, a non-profit entity, is proposing to use the outdoor patio space behind the existing building at this location for open-air sales of local art, crafts and produce. Current zoning is C-2 (General Commercial). The property is approximately 0.524 acres and is further identified as Assessor's Parcel Number: 408-24-017. Applicant: Red Rose Inspiration for Animals, Inc. Case Number: CUP2010-6**

PRESENTATION, Beth Escobar: Indicated that the applicant does special events to raise money for animal rescue businesses and she is proposing to lease what used to be the Laughing Coyote building, which has undergone a lot of renovation. She plans to rent interior spaces for local artists and craftsmen with a small coffee shop kind of thing, and then the Conditional Use Permit would be to have outside spaces for local artists' local products, and it would be operating six days a week. Beth added that she received a revised site plan that is better, and it shows that the applicant would be able to fit what is proposed on the outside. Most of it would already be screened by the building and existing walls, but the applicant was advised by staff to put something permanent on the west side of the building, so tents wouldn't be erected there on a permanent basis, and Beth thinks the applicant is willing to do that.

COMMISSION'S QUESTIONS OF STAFF:

Commissioner Losoff questioned six days a week, because the Letter of Intent indicated Wednesday through Sunday and Beth clarified it would be five days a week. The Commissioner then asked if this request met the Conditional Use Permit objectives and Beth explained that the criteria for a conditional use is basically that it doesn't create a public hazard or any health and safety issues. Staff and the applicant sent letters to adjacent property owners and there have been no responses. She doesn't see that there would be a hazard, but staff is still waiting for some information on their parking and loading plans. The owner also owns the property across the street and there is a very large area in the back that would be available for vendor parking, but as submitted, she doesn't see any major issues and there is a nice pedestrian connection to the hotels along the West Sedona corridor.

Commissioner Losoff asked what kinds of products would be displayed and Beth indicated she thought it would be jewelry, lotions, some local produce, and arts and crafts, similar to the events held in front of the Saddlerock building; it is the same applicant. As a non-profit, the applicant does temporary events there.

Commissioner Taylor indicated that he doesn't think the Commission should approve a project that is contingent on people crossing 89A, unless a traffic light is there. John O'Brien indicated that there is a traffic light program for Andante. Commissioner Taylor repeated that a proposal

that involves parking on each side of the highway shouldn't be approved, because that sits the City up for what we don't want to happen. Beth explained that they probably have parking onsite for what they want to do, the concern is the vendors. The applicant is also talking to the adjacent hotel about using some of their parking, as well as our discussion about parking across the street, but it would just be for the vendors, not the customers. The vendors could drop off their goods and move their vehicles, and then cross back over.

The Commissioner restated his concern that the Commission shouldn't approve any project that is contingent on vendors or anyone crossing the street. He also doesn't care for the idea of mixing produce with arts and crafts, etc. It seems that we are approving a catch-all, so if one doesn't work too well, they could fall back on produce, but he doesn't see any relationship between produce and arts and crafts. We have farmer's markets and it seems that a farmer's market should be that, and a place of business to sell arts and crafts should be separate. Beth explained that it is local products more so than produce, such as the lotions and honey done locally. The Commissioner indicated that he doesn't have as much of a problem with that as with produce. Produce is a different ballgame, with one you could probably take your dog there, but with the other you shouldn't, because of health considerations, even though dogs are allowed at the one at the airport. He has been to outdoor markets where dogs aren't allowed and the health law is strictly enforced in terms of food in restaurants, but outside, it gets a little more liberal. His main point is the mix of groceries with the other items.

Commissioner Eaton concurred on the subject of crossing the street, that is a problem intersection that has a bad history and anything that would make it worse should be avoided. He also sees two curb cuts; it is a small property and a lot of curb cuts have been closed, which improves the flow along 89A, so he would like to have the City Engineer's opinion about that on record, as to whether or not the two curb cuts actually improve the traffic flow. We have closed a lot of unnecessary curb cuts on 89A, and when we have an opportunity to close one, we should consider it.

Vice Chairman Griffin indicated that he hopes the parking situation can be dealt with; there are a lot of adjoining properties on that side and if the applicant discusses this with them, he is sure that can be addressed. He would like to support all of these community events; they are really opportunities for the tourists and locals to interact together. The one thing he thinks about these two projects before us today is that maybe we do need to look at them from a planning point-of-view to set up some simple guidelines to use in the future, so we can have more of a basis for review, rather than just a subjective decision. Small communities have fairs, etc., and he thinks they are good for the community. Unlike their other location where they are totally visible and exposed to passersby, he would want to understand how they are going to get people to come in and hear about their signage. He would also be concerned about 89A, but he thinks there are ways around that. Additionally, since this is going to be somewhat permanent with five days a week, those structures are going to be left there all the time, so we are starting to have things that are more permanent rather than just for a weekend, and we need to perhaps have a discussion about that. He imagines that these things won't be taken down and Beth indicated that is correct. The Commissioner noted that they are really permanent temporary structures, and although these things are good for the community, we may need a few guidelines.

Commissioner Hadley agreed with Vice Chairman Griffin and asked if the site plan shows adequate parking. Beth indicated there is adequate parking for the retail space and small interior café, but the parking for the number of vendors hasn't been analyzed. There are opportunities for shared parking on either side and the restaurant on the opposite side is now empty, plus the motel has more parking than they use on a daily basis, so we would direct the

applicant to look at those solutions first. The Commissioner asked if there would be a Parking Agreement in place and Beth indicated yes, if the Commission chooses to approve the application, there would be a Condition of Approval that a Parking Agreement be recorded.

Commissioner Soutenet agreed that a more in-depth study of parking requirements based on usage is needed and also to better understand the need for parking across the highway -- there is a correlation between the two. Once we understand that better, it might bring this more into perspective, and secondly, to address the permanent temporary structures, because the design and architecture of the structures is an important aspect to look at. Beth explained that they basically would be the pop-up tents and there is no design to those, so the Commission may need to address that if it is a major issue. Commissioner Soutenet recalled that staff has commented that tents are not encouraged, so if these structures are permanent and labeled temporary, a tent doesn't have a permanent feel to it. When we approved a Conditional Use Permit across from Tlaquepaque, there was a certain structural integrity to those tents that made them a little more attractive and integrated into the site. Beth clarified that staff's comments were related only to the tents proposed on the east side of the building that you could see coming into the City, and the applicant and property owner are looking at making that more permanent. Staff really didn't have concerns about the tents in the back, because they are fully screened, so she needs clarification from the Commission as to whether there is concern about those tents or just the ones on the east side of the building. Commissioner Soutenet indicated that if they are screened, he guesses they can do whatever they want and Beth added that more details will be provided for the next meeting.

Chairman Gillon indicated that he shares the Vice Chairman's enthusiasm about doing something on that property. It is a nice property with a nice renovation, and it would be nice to see it used. The Chairman asked about the need for a Conditional Use Permit and Beth explained that the permit is needed for the outdoor use, because outdoor displays and sales require a Conditional Use Permit. The Chairman asked if one will be needed every time they run one of these at Olde Sedona Bar & Grill and John O'Brien indicated no, they go from year to year over there as a non-profit under a Temporary Use Permit, but because this is more permanent, it needs a Conditional Use Permit for outside sales and displays. The Chairman indicated that he also likes the idea of special fairs in town, but assuming this is almost permanent, the specialness goes away after a while. He is also concerned from a consistency point-of-view, because when people have temporary carports that are tent-like structures, they are told by the City that they can't have white because of the color code, so having white tents here seems to be inconsistent. He doesn't want to make it more difficult than it needs to be, but he is worried that after a while the tents will start to look old and dingy, so he agrees with Commissioner Soutenet's idea to have something with a little more of the décor around town.

Commissioner Taylor referenced the two curb cuts and asked if the vehicles shown in the diagram would have to back-up over the sidewalk to pull out. Beth indicated not technically, there is enough room to back out from the gravel right-of-way. The Commissioner then asked if there is some way to prevent them from backing over the sidewalk and expressed his concern about situations along 89A where people park in front of buildings and back out over the sidewalk or drive down the sidewalk, etc., and there is a situation further down with curb cuts close together and they go everywhere. If they are going to use those curb cuts, there should be some way to prevent them from backing out over the sidewalk. Regarding the tent structures, he wondered if it would be possible to indicate that if this thing is successful and goes for a couple of years, they would need to put up some frame that would make them more permanent, like those permanent steel structures with blue canvas, etc., and Beth indicated that it could be included as a condition that after a certain period of time, if it proved successful, the tents

would have to be converted to permanent structures, and it could be a condition that it be reviewed by the Commission at that time. The Commissioner explained that he doesn't see making them do something permanent upfront, when they are trying out a business, and Beth indicated she thinks that is a good solution.

Commissioner Losoff indicated that in regard to showstoppers, traffic is a major issue until we know more, also a showstopper would be a loading area, given the curb cuts and the way the area is designed, people would come in and out, and delivering things could be a logjam, but that goes with the traffic plan, and that would be a major consideration. Generally speaking, he agrees that these things are great for the community, but just like we started to get a lot of requests for mixed-use projects, now we seem to be getting farmer's market-type things. We approved a couple of them recently and we have two more today; they are great, but from an overall planning point-of-view, how many of these similar activities does the City want to support? We can't answer that today, but in terms of overall planning, we may want to discuss it in more detail. Finally, the Commissioner indicated that this is a pre-preliminary work session, the actual preliminary work session is scheduled for September 30th; however, Beth explained that letter to the applicant went out before that meeting was canceled in the Commission's September 2nd meeting, so this meeting replaces the September 30th meeting.

B. Request for a Conditional Use Permit for an open-air market located at Tlaquepaque, 336 SR 179, to operate a Farmer's Market. Current zoning is C-1 (General Commercial). The property is approximately 3.946 acres. The applicant is proposing to relocate the Farmer's Market from its current location at the Sedona Oak Creek Airport to this new location and use a portion of the parking areas and existing outdoor space for the market. The property is further identified as Assessor's Parcel Number: 401-19-027H. Applicant: Sedona Farmer's Market Case number: CUP2010-7

Beth Escobar indicated that in July, the Commission approved the farmer's market at the airport and during that hearing, we were made aware of some issues the applicant had with the accessibility of the site, and she has been working with the owner of Tlaquepaque to investigate moving the market there, so she is applying for a Conditional Use Permit to move it to Tlaquepaque. Beth indicated that she had some updated parking information and depending on how you look at it, they are probably over-parked at Tlaquepaque by 60 to 80 spaces, so the applicant has been asked to provide an analysis of how the parking will be impacted. The applicant wants it to be similar to what is done at the airport with a winter season and a summer season, with the winter season starting in November. It seems to be a good opportunity to be more visible and serve more walk-up traffic with Los Abrigados adjacent to the site, plus there is some mass transit that currently accesses the site.

COMMISSION'S QUESTIONS OF STAFF:

Commissioner Soutenet indicated that the Commission has been quite supportive of the activity of the Farmer's Market. The traffic and parking is certainly the number one issue, so again, based on allowances, if there is a way to analyze the parking requirement based on the number of vendors or the historical data at the current location, to see what the equivalent is and how they would deal with that -- he doesn't see how it is physically workable right now, but there may be some alternative transportation means or other ways of looking at it.

Commissioner Hadley indicated that with the completion of Hwy. 179 and the roundabout, it is a little more devious, but it is easier to get in and out of Tlaquepaque, because we used to have to cross the street and now we can just go to the roundabout. His concern is if we have any clearer idea of what the four locations tentatively are or is that still being explored. Beth

indicated that she believes it is still being explored and that was one of the comments given to the applicant. The Commissioner indicated this may be beyond the Commission's purview, but what about the other farmer's market, and Beth indicated that you could say that each of them are unique. The Red Rock Springs Farmer's Market is really tailored to guests of Los Abridados and is a smaller venue with less variety in products, so they would seem to serve to complement each other. If Los Abridados' guests want to walk to Tlaquepaque, they could get a wider variety of produce and products. We heard that ILX is going to submit a letter of support for the Farmer's Market location, so she doesn't think they see any issues.

Vice Chairman Griffin indicated this is a good location for the market and it is more accessible being in the middle of town. Obviously, there are some questions about the location, etc., but he feels with this going through Tlaquepaque all of those things will be worked out, and he is hoping that they can get everything in order. The festivity of a farmer's market and Tlaquepaque is a natural, instead of going to a dirt parking lot with the wind blowing, and there are traffic issues going up Airport Road. Being on 89A and 179, with the small percentage of traffic this would create, it is not going to be an issue, so it can be a win-win for everybody. The minor things mentioned can be worked out with the people involved, so hopefully, we can get them up and running.

Commissioner Eaton indicated he didn't have a big problem with this, but it struck him that we are going to have three farmer's markets within 200 yards, which is more than we have farmers, so he doesn't know where all of the produce is going to come from. He doesn't agree with the idea that Tlaquepaque is over-parked; he has driven through a number of times and had to drive around and around to find a parking space, and there are quite a few times when the parking is fully utilized other than just on special occasions, but this may not have enough impact to make it appreciably worse.

Commissioner Taylor indicated that he likes the idea of having it move from the airport to Tlaquepaque. He wonders about the parking, but if the City feels it will work, then it would be good.

Commissioner Losoff indicated he thinks it is a good place for the Farmer's Market, but he also thinks parking is a problem and he doesn't know how we could come to the conclusion that it is over-parked; over-parked to him means that there aren't enough parking spaces. Many times his guests and visitors complain that there is not enough parking; however, the Farmer's Market is going to be open in the mornings. Beth clarified that it would be in the mornings in the summer and the mornings or afternoons during the winter. The Commissioner indicated that may not be too bad, if it doesn't coincide with the peak parking times. He guesses the showstopper would be parking flow and parking traffic, and there was mention of a lot recently purchased across the street in the letter. Beth explained that the property where the Commission did the Conditional Use Permit for Day in the West was recently purchased by the owners of Tlaquepaque, and as a result of that purchase, the Conditional Use Permit for Day in the West is not moving forward and that parking area is now available to Tlaquepaque customers, and there is a crosswalk there. The Commissioner indicated that he understands there is a crosswalk and drivers are supposed to stop, but he has seen cars zip through there, so it is not the answer to everything, but it is a crosswalk and people are supposed to stop. The Commissioner then indicated that although it is not an issue for the showstoppers, the Commission or staff should look at how many farmers' markets the City can absorb. He thinks that is something the Planning Commission should look at apart from the zoning side.

Nick Gioello clarified that the Conditional Use Permit for Day in the West runs with that property, and the new owner could operate under that Conditional Use Permit, but has expressed to him in conversations, that they will not be pursuing the outdoor activity portion of that, but that option is always available if that owner chooses to do that. He just wanted that on the record, so it is clear.

Commissioner Losoff referenced the Letter of Intent and indicated that there was a comment about a deadline of November 7th and the applicant wanted to go ahead and start marketing, etc., but he would think that is premature. It is a good thing and we are all in favor of it, but do we want to be held to some outside deadlines? He is concerned about an artificial deadline being put on the application. Beth explained that the applicant pointed out that the information would include a disclaimer that the location is pending City approval. The applicant's biggest concern is notifying the vendors of a possible change, and in the two years the Farmer's Market has been operating, they have an extensive email list of customers who want to know what products they will have, so the applicant is wanting to let them know that there is a potential change in the location; however, staff hasn't given her any direction on that.

Chairman Gillon agreed that the parking needs to be dealt with, but he suspects that part of the answer is that people circulate around the front, when there is a lot of parking in the back. It may be worth taking note of that when choosing the placement of the Farmer's Market, to get it to where people will be drawn to park in the back. This is a great location for it; he spent a little time in the Northwest and up there any city of any size has a Saturday market and they basically block off parts of the city. Those things are so well attended, they have them in brochures on what to do in the city and it would be great to get some of that going around here.

Commissioner Taylor indicated there is a great farmer's market in Los Angeles and they use their bank parking lots on Sundays. Commissioner Soutenet indicated that he would like to confirm what kind of signage would be allowed and how that would work, so we know ahead of time what we are getting into. Beth indicated that the applicant included in the letter that she wants to hang banners when they are there, and she has been asked for a mock-up. John O'Brien added that would be onsite, which is a little different than the Sign Code for permanent signs. The Chairman pointed out that this is more or less a permanent installation when it is open, so we should think of a more permanent sign. He understands the difference between a temporary banner and a regular sign, but we should keep to the Sign Code.

6. Discussion/possible direction regarding amending and/or establishing additional criteria for time extension requests.

Chairman Gillon indicated that during the last Commission's discussion there were some questions for Legal Counsel and he understands that John O'Brien has answers to some those questions.

John O'Brien agreed and indicated that the Commission considered this item on July 15th and there were some questions. City Attorney, Mike Goimarac, has provided a memo answering those questions. The goal today is to reach consensus on changes to the Time Extension criteria, and then present those to the City Council at the joint meeting on October 14th. If Council is in agreement with the revisions, then staff would draft specific ordinance language and bring it back through the public hearing process, so it come back through a Planning & Zoning Commission public hearing and to City Council for final consideration. Some of the issues that the Commission needs to reach consensus on are the number of possible extensions; they currently get a one-time extension. Additionally, do you want a maximum time limit on extensions; currently, there is no specific time limit noted in the Land Development Code. Also, language changes to the criteria; currently, the

language gives some guidance, but is fairly subjective, so does the Commission want to make the language more objective and specific or more subjective, but more flexible? The City Attorney felt that you should keep it flexible, because you can't anticipate everything that is going to come up and you don't want to lock yourself in. Those points may not cover everything, but they were your primary issues.

Commissioner Losoff indicated that the things mentioned and where we are going is fine. His two concerns have been that extensions should go on the hardship, not merits of the application. We approve the application based on the benefits to the community, etc., and that is a done deal. When an applicant requests an extension, it is because of hardship, so to him that should be the only thing the Commission looks at -- the hardship, not the merits of the application. He would be in favor of a second extension, as long as we don't ever approve an extension indefinitely; to approve an extension forever is a big mistake. Those are his two issues.

Chairman Gillon indicated that he would differ a little on the first one, since this is a project that hasn't been built, the whole issue of community benefits is still at play, so by granting an extension, we are extending the possibility of getting those community benefits; however, he is moved by the City Attorney's memo that says not to get very specific. He also shares the concern about issuing indefinite extensions; he would also be in favor of a second extension. The first extension is sort of granted as a matter of course; they need proof that they have made an attempt to move forward, and if they haven't been able to, we look at the hardship issue, but he doesn't know of a case where we have turned one down. In fact, sometimes it is just based on the cost of financing, so it is just sort of a matter of course, but for the second one, he prefers some language that says that the Planning & Zoning Commission can recommend to the City Council a second extension of not to exceed five years at its discretion, but it is optional and he wouldn't see more than that; he would do it on a case-by-case basis. If we grant an extension for two years, and then they want a second extension of five years, that is seven years, and if they haven't been able to build a project within seven years, there is something wrong with the process, and he is not sure that we should hold out for a lot longer than that.

Vice Chairman Griffin agreed, but indicated that if you allow multiple extensions other than the one we have, you have to defend the fact of why you aren't granting somebody a second extension. He thinks the time limit on the second one should be at the discretion of the Commission, but from a planning point-of-view, when you are looking at a rezoning that had community benefits compared to a permitted use, you have to look at those from a different perspective, so he would support just one extension with the ability to have more time on that extension than just the standard two years and not make the language objective, so there is some flexibility. Just like when writing ordinances, it is extremely difficult to write one ordinance that fit all scenarios. There are different elements in that, so you need some flexibility. The way it is written now has worked fairly well, other than it has been a struggle to give more than two years.

Commissioner Taylor indicated he wouldn't do anything until we get through the planning process, because if we look at 89A and decide we really want to do something over the coming years, we want the ability to go back and look at these projects that have extensions, so we shouldn't give up the ability to have them come back in. Also, we shouldn't put ourselves in the position of trying to analyze why a particular project is requesting an extension, because there are too many things that go on in projects and it isn't possible to really know what is behind the request. Right now, we pretty much know because of the economy, but in general, we don't necessarily know all the facts. We should standardize it and if it is two years now, we should stick with two years, and if we want to grant extensions, we should just grant it, rather than being set up as judges of whether or not they should have an extension.

Chairman Gillon indicated that he believes there are some developers who go through the Development Review process to increase the value of the land, with no intention of ever building and if we give them an extension, we are just helping them do that, and he doesn't think that is an appropriate function for the City. We should make sure that they do seem to intend to build the project before they get an extension.

Commissioner Eaton indicated that this Commission has to be judge of whether or not an extension is valid. Some standards are going to be needed for granting hardships; the standard for most Boards of Adjustment is that a hardship is on the land, not the owner. In the case of these things, it could be on the use, but not on the owner. It is a real can of worms, when you start granting extensions and applications on the basis of somebody having a personal hardship. Yavapai County used to grant hardships to anyone who said they had a hardship; one was that a mother was 82 and loved to bake, so they needed two kitchens, and they granted it. He doesn't think extensions should be granted in the case of a hardship on the owner; they should be on the use or with the land. He has mixed emotions about whether or not it should be one two-year extension or one five-year extension or a maximum of two two-year extensions. He has mixed emotions on that and can argue either side.

Commissioner Hadley thanked Legal; he learned a lot reading that memo. The Commissioner then asked if he understood Chairman Gillon correctly that the first extension is two years, and then if there is a second extension, it would be flexible and the Chairman indicated yes. Chairman Gillon explained that he suggested that, because the first one is pro forma and it is more or less given to anybody, especially in times of economic hardship, so that first one should be a standard and the second one should be more discretionary. Commissioner Hadley indicated that he tends to agree with that, but are we creating any sort of problem by having a flexible extension period?

Ron Ramsey indicated that as Mike Goimarac pointed out in his memo there are standards of review that a court will impose for actions done by the municipality, and it depends on whether the municipality is exercising its legislative authority or its administrative authority. Most courts will say the legislative authority is entirely up to the City and they won't examine the reasons why you enacted certain ordinances or whatever. They will take a closer look at administrative, because that is where you end up with individual projects and you have involvement of the discretion of the staff, etc., and in this case and other cases, when he has been asked to give input, he has always indicated that he likes criteria. He liked criteria when you were looking at design review changes to make things more of a series of factors that you would use and maybe even in some cases give a rating percentage to some factors. In this case, he and Mike debated, and you are looking at Mike's memo, and his (Ron's) comments are his own. He likes the idea of at least the current criteria, one of them, like basically an economic hardship, is supported by some cases where they look at that as a criteria that is legitimate, but he likes even further ones, because he knows you have struggled with extensions, and he likes criteria that reflect the complexity of the project. A time extension dealing with the Red Rock Inn is different than when dealing with the Preserve; you have huge factors. He also likes criteria that are based on how many times the person in the past has continued to interact with the staff over the first two years for the project. Have they really demonstrated active attempts to work on the project versus just marketing it, which exists as well?

Ron explained that Mike's memo is the other direction; he is correct that there are no particular criteria in state law. The law he quotes is all we have on the books and it doesn't say that you are able to grant an extension or what criteria you have or how many you do; it is entirely up to each City. What it does say is that you have to wait until the original time period has expired or an extension has expired before you actually schedule it for some sort of legislative action, such as revocation, modification or a further extension, so you have to wait until the end of the time period

given before you can do the 63-day window that we play with. The statute tells us that you can't really post this for a public hearing and take action at that hearing, until they have run out of time.

The Chairman noted that refers specifically to legislative action like zone changes and asked about just design reviews. Ron indicated that he agrees with what Commissioner Losoff was saying in that you start to get into an area where you could be challenged in court if you take this opportunity to enhance the City's benefits in the project. The idea of extensions, and the fact that you do them at a certain time during construction, is that you have completed your review, whether it is design review, factors involving a zone change, community benefits compatible with the Community Plan -- you looked at all of that. The only thing they are here for is to ask for more time to do what you and the City promised to do together -- it was a partnership, so if you start getting into asking for more benefits, it would start to smell of an extraction, so he definitely shares that view.

Chairman Gillon asked if it is valid to cite as criteria that there is community benefit in the original negotiations with the City, and therefore, we would like to extend it so we have a chance to get that benefit and Ron indicated that he thinks so. The Chairman then asked if the criteria could be a priority or could we do an extension and as part of the extension state the reasons for the extension? Ron explained that you don't have to go as far as ranking the different factors. Chairman Gillon clarified that he is asking if the ordinance can say that we can grant a second time extension, but we need to state the reasons for so doing without any criteria beforehand, just say this one interacted with the City a lot and they were working to move the project forward and we want to pursue the opportunity to get the community benefits. Ron indicated that you could put that in the ordinance.

Commissioner Losoff indicated that the current criteria are pretty clear and it covers both Ron's and Mike's comments in terms of realities. It says that in spite of good faith efforts of the applicant, circumstances beyond his control have prevented timely pursuit of the project, so that could be a death in the family or all kinds of things, despite good faith efforts. Second is the applicant has completed substantial property improvements, so in either instance, the applicant should show in good faith they had diligently pursued implementation of the application. Those are pretty good and sound criteria, but they don't address the issue of two years or ten years. Ron indicated that the piece that is missing is a cutoff presumptive to, and then do a second one with additional criteria. The Commissioner indicated that the issue is that the applicant is taking involvement and using it for whatever reasons, as long as there is good faith effort as you determine, it would meet the criteria and current standards. If we had a comment about two years plus five years or five years maximum, he thinks it would cover pretty much everything. Chairman Gillon agreed, except he would word the second extension differently to say that for the second extension they have to continue to demonstrate whatever conditions they demonstrated for the first extension, but the Planning & Zoning Commission has to determine and document that there were additional reasons to grant the second extension, and not say any more than that in the ordinance.

Vice Chairman Griffin asked what the difference is from the first extension; you are only postponing this subjective decision to extend it. You are still going come down to it in the second extension by having the ability to extend it or not. Commissioner Losoff indicated that it could be something that would give benefit to the doubt in an economic situation, if they were given two years the first time and things haven't improved. It is not their fault and this economy hasn't turned around in two years, but if things don't turn around in another five years, we could all have problems. Vice Chairman Griffin indicated that from a pure planning point-of-view, planning does change, and in five years, do you think that the project that hasn't been built fits into your new planning scenario. Commissioner Losoff indicated that is covered too; the first two were good faith efforts and financial, and it says that extensions of previously approved projects can be given

modification of previously required Conditions of Approval as warranted by interim changes in the area or to comply with code amendments, etc.

Vice Chairman Griffin indicated that they are talking about lighting and things like that, but he is talking about a total shift in the planning process, like a redevelopment plan for 89A. Once a building is there it is there for about 50 to 60 years. Commissioner Losoff read the language again and added that it says and/or to ensure compatibility with any improvements within the context area. Chairman Gillon explained that the Vice Chairman is talking about if we have a whole new Community Plan and we don't want to grant an extension, because we don't want it to happen. The Vice Chairman indicated that if this becomes six or seven years long, it certainly is not taking anything away from the person, with 207 and everything else. We are going to try to have them do something a little different that would still be beneficial for them, but in a different direction; otherwise, how would we ever switch it around?

Commissioner Losoff indicated that you would not approve it on the basis of the incompatibility. Vice Chairman Griffin explained that if we have a rubber stamp for the first extension, and then we consider not giving them the second extension, we have extended it for at least four years and have to have a good reason to not give them more. Chairman Gillon indicated that he doesn't agree with four years, the second extension is totally discretionary. It is an exceptional case, not a normal case, and we know the plans we have and if we are stupid enough to grant a 5-year extension on the cusp of having a Community Plan update, then shame on us.

Commissioner Soutenet indicated that we are to a great extent trying this exercise to defer the decision-making process, which would be case specific, and his opinion is this case is not well made. He sees that the code has all the ingredients needed to make good decisions on a case-by-case basis, and he doesn't see the grounds for any amendments, additions, etc., making it more specific than it is already. Vice Chairman Griffin indicated that if we are on the cusp of doing a huge planning process and a project comes through that meets the current codes, then we would have to approve it. The Vice Chairman then asked if the Commissioner was saying that he would evaluate at the first extension point whether or not, you would extend it the next two years. Vice Chairman Griffin indicated that it sounded like it is automatic; Commissioner Soutenet indicated that it is not automatic. If there has been a major code change, once it has been granted, then the second approval could be contingent with the updated code. Vice Chairman Griffin asked if that would be justification to not extend it in the first extension.

John O'Brien indicated that he agrees with Commissioner Soutenet, an extension is not a given. They have to meet the criteria; the first one is not just pro forma and they go for it, so this would be a major shift, if you say the first extension is a given. Chairman Gillon clarified that he is not suggesting that we change the way we do the extension now, it is just that some of the ones he has seen has been close to pro forma, because the hardship is that they can't get a bank loan. We would still do the hardship test, etc., but when they just market the property and don't even talk to the City, perhaps we don't even grant the first extension.

Commissioner Soutenet indicated that would occur in the current process, so why is there a need to change; why should we define something that would go against us once we are faced with situations that aren't supported in that narrowing of the legal case. Ron Ramsey indicated that if you specify additional criteria and they meet the criteria, but you still don't want to change it, because of imminent changes in the planning process, etc., you will have a problem. You are going to be telling somebody that although they meet the criteria, for other reasons, you don't want to give them the go ahead on a project that they have considerable investment in, and then you would have some problems.

Beth Escobar noted that they currently can ask for modifications as part of the Time Extension; however, Chairman Gillon indicated that the kind of modification would be to ask for a redo. Commissioner Eaton pointed out that changes in the Community Plan aren't in effect until they are adopted -- until then you are on the current Community Plan. He would be very nervous to be arguing with somebody on the basis of what the Community Plan might become. Chairman Gillon added that the Commission has exactly the same issues every time we do a plan or design review and the Community Plan may change; it is not justification to tell the applicant that we can't deal with it for a couple of years, because we want to change the Plan.

Vice Chairman Griffin indicated that we have economic issues now, so do we want to make changes now. We have the ability to consider that and look at extensions on that basis, but if we change it because we currently have that problem, and then the economic problem goes away, we may question if it was really a problem. We have everything in place and we have done it for a long time; there have been issues about making it a little more rubber-stamped so they automatically get this, but P&Z's direction is to evaluate those decisions -- that is why we are here. If they met A, B, and C, and then automatically got it, why are we here? We are supposed to evaluate the project and there is some flexibility in it, so he thinks it is fine. He doesn't see fixing it, unless you want the ability to have another extension. The Vice Chairman confirmed with John O'Brien that the code states we can only give one extension and Ron Ramsey added that there was state law; the limit to one request is probably what is driving some of these longer extensions, so you could just take out "one extension" and deal with each one.

Chairman Gillon indicated that he is still in favor of having some distinction between the first extension and the second one. For the first extension, they need to demonstrate they have met the criteria, etc., and we would be hard pressed not to grant it, because that is what the City always does if they meet the criteria. The second extension should be more discretionary and the Commission should have to say the reason we are doing something that is a little different; the second extension is up to five years, and in the recommendation to the City Council, the Commission would state the reason for that decision.

Commissioner Eaton indicated there should be some discussion on the first extension; you can't make it automatic. Chairman Gillon indicated that he does not want to change what we have today; we already have discretion, and we may do a better job of taking advantage of that. Commissioner Eaton stated that according to the news this morning the recession is over. Commissioner Losoff indicated that the first extension isn't automatic, but the Commission may not have looked at the criteria long and hard on each application; however, it is clear that we have some discretion, so he thinks it is good. He is now thinking that we could take out the part that says one extension and just say nothing about it, so we could grant an extension not to exceed whatever, and then if there are some really exceptional cases, we could entertain a second extension -- it would give us that flexibility by removing the one time only. Currently, when the application is approved, there is a two-year window. John O'Brien indicated that is typical, but it depends on what the original . . . Commissioner Losoff interjected that if we give them another chance that is four years, if we give them another two to four years, you are going out a long time, so maybe we should just remove the limit of one extension and indicate the criteria for an extension, and then we grant whatever, and not say anything about a second one. Chairman Gillon indicated that his problem is that it is the same criteria and everybody would get a second one, because all they have to do is come in and say nothing has changed since the last extension, and since they qualified for the first, they qualify for the second.

Vice Chairman Griffin indicated that he liked Ron Ramsey's idea of putting in another condition about the complexity of the project, because when you look at a project like the Preserve or

something like the Cultural Park, a couple of years for planning is very possible, so if the complexity of the project was added, and it is a simple motel, then if they are going to do it, do it; they couldn't be judged the same as a huge project. He has a problem with mentioning another extension, because to the developer it could seem like it would be somewhat automatic and the developer could sort of count on it, when the thing we want to push is if they are going to go through this whole thing, then do it and get the project going instead of marketing it for two to four years.

Ron Ramsey indicated that it could be more firm than the application for an extension by requiring the applicant to justify and suggest the time limit, so they would justify why two, three or four years. Then they have a commitment in the extension based on their own terms, so they can't complain. Chairman Gillon indicated the problem he would have with that is based on the ones we've seen, he is not sure there are any criteria that any one of them could have told the Commission what the time period should be. John O'Brien indicated that they do come in and say they think they need three years, because of these reasons or in the case of George Moore, they wanted it unlimited, so they currently try to justify why the timeframe should be.

Commissioner Taylor asked for clarification about what happens if they aren't granted an extension and John O'Brien explained that the project technically dies or in the case of a rezoning, the Council would have to direct staff to start the reversion process of the zoning. Ron Ramsey explained that the statute describes that when you are out of time, that is when the statute kicks in and says if you go one day beyond your normal time. The statute used to say it automatically reverts to the former zoning classification and that is the end of the story. Now, it says that the City Council must hold a hearing and at the hearing determine to modify, revert, etc. Commissioner Taylor asked if we would be better off to just get people to testify that it needs to be two or three years or whatever for an extension, and then (tape unclear) or they die. If they have a really good project, the drawings are done, they don't have to redo them unless there have been code changes, but that doesn't affect the zoning per se, so they could still build that building, they just would have to go through the formalities of the process, if an extension was denied. John O'Brien indicated that if it was a Development Review and there was no rezoning involved and you deny the extension, in that case there is no reversion, because there was no rezoning, so it would die and they would have to re-file and go back through the Development Review process. Commissioner Taylor indicated that in the case of commercial space, they can't get a bank loan, because they can't rent the space, because there are already lots of spaces for rent, so they don't want to build the building and the bank doesn't want them to build the building, so nobody wants to build the building except us, and we don't really want an empty building, so nobody wants to build the building, so just let it die and come back through.

Commissioner Eaton indicated that one of the reasons you have discretion on the first application for an extension is that you can differentiate between something like the Preserve and a little fast food restaurant. You may not want to give a little fast food restaurant that hasn't performed in two years an extension or you may find adequate reason to, but compared to something like the Preserve, there may be valid reasons to consider it for a longer period. Chairman Gillon indicated for that reason, he prefers adding to the basic process we have something that says the complexity of the project should be considered. Commissioner Eaton added that you don't want to quantify it.

Vice Chairman Griffin indicated that the questions before us are the number of extensions and whether or not one extension is all we want to give or if we want to ability to give more than one extension and just take each project and decide what we want to do. Chairman Gillon asked for a quick straw vote of how many would be in favor of the addition of the second extension the Commission just discussed and five Commissioners indicated yes. John O'Brien then asked if that

would be a maximum of two extensions. Vice Chairman Griffin indicated that Ron Ramsey suggested not even putting it in, but he (the Vice Chairman) doesn't know. Chairman Gillon explained he was in favor of a second extension that it is explicitly different, so we have say what the criteria are for the second extension, so they don't just keep extending because of a hardship.

John O'Brien asked if the Chairman is saying that on the second extension, you are not putting any criteria in the ordinance; it would just be a discretionary thing. The Chairman stated that a second extension could be granted at the discretion of the Planning & Zoning Commission and/or Council provided that 1) It meets the criteria for the first extension, so they still have to have a good basic reason for it, and 2) The Planning & Zoning Commission, in its recommendation to the City Council, must identify specific reasons why it is recommending a second extension.

Chairman Griffin asked if you run into a problem, if you have different criteria for the second one and you are more specific. Ron indicated it is not that much different, because you are repeating the same criteria, one which is good faith effort to expeditiously do the project, and if you have had two years to do the project and a two-year extension and you want more, there is a real question of whether or not you have pursued that in good faith and diligently, so in that sense, he thinks it is more of a outgrowth of the criteria you are looking at. The problem he would see is if people know that this is going to be the City's policy, it is going to push the envelope for the first extension to be five years. They don't want to worry about meeting higher criteria after the first extension; they will say that if that is the way they are going to look at it, they want 5 years now. Chairman Gillon indicated that we should just leave the first extension at two years then.

John O'Brien summarized that the Commission is saying two possible extensions; the first one is up to two years with the existing criteria, but you also want to add one that talks about the complexity of the project. Vice Chairman Griffin indicated yes, it would be one of the criteria. John O'Brien indicated that he thought that was if you were going to have a longer extension granted, so would you want that in the second extension? Ron Ramsey indicated that you don't say anything about two years; the Commission is just saying that it wants to see one more criterion put in there for the complexity of the project, and that alone is going to tell you that more than likely it would be granted a longer extension than a shorter one. John O'Brien indicated that he heard a concern about unlimited timeframes, so if you don't have a maximum timeframe on both the first and second extension, you aren't really addressing the issue that has been raised.

Chairman Gillon suggested saying that the first extension is two years and the second extension is up to five years, and John O'Brien noted that the complexity issue comes into play for the second extension, because it doesn't make sense to put it in the first extension. Chairman Gillon indicated in the practical sense, he agrees with that, because the two-year thing tends to be the economic thing anyway. John O'Brien explained he is trying to frame this to get a consensus.

Vice Chairman Griffin indicated that he is really against numbers; thirty-two percent of the road can go over 6 ft. above . . . Whenever we put in numbers, there is always a scenario that bites us, so he doesn't know why we need numbers, when we need some subjectivity; it just removes our ability to evaluate the project independently.

Commissioner Losoff suggested that given all of the discussion, if we have a consensus, we could let staff prepare language to look at in our next meeting. John O'Brien noted that the Commission doesn't have another meeting before your joint session with Council and that is when we thought we would present it. Chairman Gillon indicated that we could frame the discussion with Council; however, John O'Brien stated that he is unclear as to what the consensus is.

Chairman Gillon indicated that he would put the two and five years in the code; effectively, we do have a two-year standard, because that is what we always do. Other Commissioners noted that some were three or four years. The Chairman indicated that the Commission always discusses if it is different than two years -- it is a big deal if it is more than two years. Commissioner Eaton questioned if it would make it that much more of an improvement. Chairman Gillon indicated that he agrees with Commissioner Losoff about the possibility of indefinite extensions, because that is bad policy. Vice Chairman Griffin stated, "Then don't vote for them"; he hates numbers on these things, because we get stuck with them when we don't want them or we can't go beyond them when we want to.

Commissioner Taylor indicated that after seven years of any potential project, they aren't going to build it; they are going to change it themselves. Commissioner Losoff indicated that there should be some specific "not to exceed" numbers. We want to be kind to developers and applicants, but we should have criteria and they should be held to them.

Chairman Gillon indicated that he would also like to set expectations for the applicants; they would get two years based on the preliminary criteria and if they want more than that, it would be a little longer depending on what they are doing. Vice Chairman Griffin stated that if they really want the project, there should be an avenue for them to pursue this to create the project. Chairman Gillon added if the Commission thinks it is a good project and they have worked hard on it, etc., although he does agree with the comment that there does come a time that we are getting reduced benefits. Vice Chairman Griffin agreed, because they won't follow the due diligence.

Chairman Gillon asked for a quick straw vote for consensus to indicate having numbers in the ordinance that says, two years and five years. Commissioner Hadley questioned if it has to be specific; it could say not to exceed and the Chairman agreed. Four Commissioners indicated agreement. Chairman Gillon asked if staff could send the Commissioners an email to look at the possible change and John O'Brien indicated that he could do that, but it can't be discussed by email. The Chairman agreed, but explained that prior to the meeting with the City Council he, the Vice Chairman and John O'Brien could get together and look at the feedback from the rest of the Commission and decide what to present to the City Council. John O'Brien explained that it would have to go back through a public hearing, but we thought it would be an opportunity to present it to the Council at the joint session, to get a read from them on where you are headed with this.

Chairman Gillon indicated that it was just that we have a first and a second extension and the first is not to exceed two years and the second is not to exceed five years, and the first one is basically what we have today with the complexity of the project in the first one also, and then the second extension would say that you have to meet the first extension's criteria and the Planning & Zoning Commission needs to state, in its recommendation to the City Council, the specific criteria in which it made its decision to grant the second extension. The Chairman then asked staff to write up a half-page to say something like that. Then we could present it to Council and explain that it is still under discussion, but this is where we got in our last meeting.

Ron Ramsey indicated the Commission had done a lot; it preserved the criteria now on the books, which he would recommend, and you have applied them fairly well with the presentations and different requests for extensions, and those are going to stay on the books, but you are going to have to remove the criteria that now says you only get one extension.

Councilor Ward indicated that the Council has a conflict on October 14th, so his guess is that if you need more time to sort this out, the Council wouldn't be opposed to deferring the meeting. John O'Brien indicated that the agenda is incorrect; the joint meeting hasn't been canceled.

Beth Escobar indicated that there also would be a language change to the third criteria that says, "In either case, the applicant must demonstrate that he has been diligently pursuing . . .", and Mike Goimarac suggested expanding that language to state, ". . . diligently pursuing, including but not limited to being current on all City fees, having no code violations existing on the subject property, and no environmental health and safety issues", so the memo will include that language.

7. Discussion regarding the Update of the Sedona Community Plan and reports from Working Teams.

Mike Raber indicated that he had provided an outline of Council's action last week on the members selected to the Steering Committee. The Council appointed 11 members, including Councilor Litrell, Chairman Gillon, Mike Bower, Angela LeFevre, Elemer Magaziner, Gerhard Mayer, Judy Reddington, John Sather, Michael Steinhart, Jon Thompson and Jim Eaton is leaving P&Z but emerging on the Steering Committee. The first meeting date is set for November 16th at 3:30 p.m. It is kind of far out, but just getting everybody together for the first meeting was a real challenge. In the first week of October, we want to have a packet ready to send to the Committee, so they can start reviewing stuff. We are thinking of several issues, including the first thing they need to do, which is look at the Public Participation procedures. One of the things that staff will take back to Council on October 12th is the draft Steering Committee's scope. Chairman Gillon helped staff draft that and it is attached to the memo, so the Commission can let staff know if there are any comments or concerns. It will remain in draft form, but it will give the Committee a starting place, and we suspect that they will add detail to that scope, once we start meeting with them.

The next meeting will get into more detail on the plan update process. Chairman Gillon asked when the Commission will know that the draft is final; what is the approval process? Mike explained that unless there is a different direction from the Council, his thinking is that the Steering Committee will set that and decide their scope, and we would let the Council know the Steering Committee's final work program, unless the Council had some major objection to that. We have some general direction that came from the Council and from P&Z for the Selection Team, and that has been pulled together in the scope. We will add some detail to that and make sure the Steering Committee is comfortable with that. The Chairman indicated that at the very least then, there will be tacit approval by the City Council; at some point, staff will present it to the City Council and Mike Raber stated yes; if there is a real issue, we would obviously have the Council weigh-in and adopt it or approve it. The Chairman then asked if staff wants to get feedback from the Commission in the meantime, and then get feedback from the Committee. Mike indicated yes, if any Commissioner has concerns or comments, those should be given to staff before it is taken to the Council on the 12th, but it will still be in a draft form.

8. Public comment regarding the Update of the Sedona Community Plan.

There was no public comment.

9. Discussion/possible action regarding future meeting dates and agenda items:

Thursday, September 30, 2010 (WS)	- Cancelled
Tuesday, October 5, 2010 (R)	- Cancelled
Thursday, October 14, 2010 (WS)	- Cancelled
Tuesday, October 19, 2010 (R)	

John O'Brien summarized that the 30th and 5th are canceled, the 14th is the joint session with Council at 3:30 p.m., and "canceled" shown on the agenda is not correct. John O'Brien then asked if the Commission wanted to remove the Time Extension discussion from that agenda. There is no

rush; he just thought it would be a great opportunity to present the idea to Council to get their feedback, but it is not necessary, especially since there is a schedule conflict at 5:30 p.m. that day. The joint session is basically to discuss what the Commission's goals are and what you are working on, etc., plus staff and Council interactions. The last time is when the Council said for P&Z to do planning and the Building Height Code, Landscape Code and Design Review Manual changes. If the Commission has something specific you want to discuss, he can include it on the agenda.

Commissioner Losoff indicated he would not be present for that meeting; however, regarding the discussion on the Time Extension, he feels that unless the Commission comes up with something specific, it will go on and on, so he would rather wait and be very specific with the Council. Commissioner Taylor indicated that he also wouldn't be present and John O'Brien noted that Commissioner Eaton won't be there either, so three Commissioners will be out. Chairman Gillon indicated that he would opt to ask the City Council to postpone it, and maybe before the next meeting, we can think about things we would like to discuss with the City Council.

John O'Brien indicated that he would ask to postpone the joint session, and he then asked if the Commission wanted to put the Time Extension issue on the October 19th agenda with long-range planning. Chairman Gillon indicated yes, presuming that we can come up with something that reflects what we discussed and put it out as a straw proposal, and then we will have a brief discussion about it. Additionally, he would like to have an agenda item on the 19th to discuss the agenda topics we want to discuss with the City Council. John O'Brien noted that the 19th is for the Time Extension Criteria and items for the joint session, plus long-range planning.

Chairman Gillon indicated that the following meeting will be November 2nd; however, John O'Brien indicated there would be a work session on October 28th for the Farmer's Market and another one at 3:30 p.m. The Chairman indicated that he would not be present on November 2nd.

10. Adjournment

Chairman Gillon called for adjournment at 5:17 p.m., without objection.

I certify that the above is a true and correct summary of the meeting of the Planning & Zoning Commission held on September 21, 2010.

Donna A. S. Puckett, *Recording Secretary*

Date